

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JON'TA TOMORREEA HAMPTON-BEY,	)	
	)	
Petitioner,	)	
	)	
v.	)	1:09CV777
	)	
ALVIN W. KELLER, JR.,	)	
	)	
Respondent.	)	

**RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Petitioner, a prisoner of the State of North Carolina, submitted a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Docket Entry 2.) Magistrate Judge Donald P. Dietrich recommended that said petition be dismissed for failure to secure an order from the United States Court of Appeals for the Fourth Circuit to file a second or successive habeas petition. (Docket Entry 3.) Petitioner has filed an objection to that recommended ruling. (Docket Entry 5.) That matter has been referred to the assigned Senior United States District Judge for further action. (Docket Entry dated Jan. 7, 2010.)

Since that referral, Petitioner has filed two additional motions, the first of which he styled as a "Motion for Summary Judgment" (Docket Entry 9), and the second of which he styled as a "Motion to Dismiss" (Docket Entry 14). In the former motion, Petitioner asserts that the Court should grant him summary judgment "because there is no genuine issue as to any material fact, that would substantiate the Plaintiff's confinement as being lawful. . . ." (Docket Entry 9 at 1.) Neither in said motion, nor the brief filed in support thereof (Docket Entry 10), does

Petitioner indicate that he has secured an order from the Fourth Circuit authorizing his litigation of a second or successive habeas petition. In his "Motion to Dismiss," Petitioner requests that this Court dismiss his underlying criminal case in state court based on the same theories he seeks to present in the petition filed in this Court. (Docket Entry 14 at 1.) As with his summary judgment motion, Petitioner fails to provide any indication in his "Motion to Dismiss" or the brief filed in support thereof (Docket Entry 15) that he has obtained permission from the Fourth Circuit to pursue a second or successive habeas petition.

Accordingly, for the same reasons stated in the prior recommendation (Docket Entry 3),

**IT IS THEREFORE RECOMMENDED** that Petitioner's Motion for Summary Judgment (Docket Entry 9) and his Motion to Dismiss (Docket Entry 14) be DENIED.

/s/ L. Patrick Auld  
**L. Patrick Auld**  
**United States Magistrate Judge**

March 16, 2010